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Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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ASIA: Criminal justice reforms imperative to human rights protection

1. Over the past decade, internationally and regionally, debates on the requirement of criminal justice institution reforms in Asia have died down. In forums like the United Nations itself, debates about justice institution reforms that are required in Asia has taken a backbench, to such an extent, that the Asian states face much less critical review internationally, about their highly under-functioning criminal justice institutions.

2. This is more evident from the absence of adequate international concern, when governments with authoritarian tendencies encroach upon the independence of vital domestic institutions, for instance the judiciary. The latest casualty is the complete and forceful subjugation of the judiciary in Sri Lanka to the executive writ of the President's office, and the worrying silence of the international community, despite calls for intervention from professional bodies in Sri Lanka, like its Bar Association. By the time international interventions trickled in, the irreversible damage was already done. Today Sri Lanka's judiciary has reduced itself of being a mere extension of the President's office.

3. The lack of independence of a vital state organ like the judiciary in Sri Lanka has further diminished the rule of law paradigm in that country. The judiciary was the only institution in Sri Lanka that was looked upon by the layperson that has fallen victim to state abuses, and by the professionals who were willing to assist a victim seeking justice. However, today, courts in Sri Lanka have reduced to mere bargain grounds like market places, where judges force compromises upon petitioners against their will and lawyers resisting forced settlements punished by the courts as well as by the government. The Supreme Court of Sri Lanka today is notorious, for dismissing summarily, habeas corpus writs and for throwing out of court other fundamental rights cases, reiterating, that the executive is the supreme authority in that country.

4. Yet another country that has dropped off from international attention within the south Asian region is Nepal. The intensity of international engagement on Nepal over the past four years have diminished to such extent, that today, the long wait of the people of Nepal to realise the true democratic changes that they have been promised does not find any resonance outside Nepal. Long periods of utter neglect during the monarchy has literally left Nepal in a state of deep internal wilt that the administration does not exist beyond the capital city and tourist destinations and satellite towns like Pokhara.

5. Police stations are understaffed and basic infrastructure including buildings absent in Nepal that the police as an institution is at the verge of non-functioning. Due to this, the people resort to assistance from local criminals enjoying political patronage to settle disputes. Parts of the country have stooped into a lawless abyss that in case of an emergency the administration could take days, if not weeks to intervene. Courts are understaffed, and often remain closed due to lack of adequate infrastructure to run. The Nepal police struggle to pay monthly salaries to its staff, even though the basic monthly pay of a police constable is less than USD 150. Such low pay is one of the reasons why the police remain one of the most corrupt institutions in Nepal.

6. Deep-rooted corruption, ineptitude as well as incapacity to discharge responsibilities has pushed justice institutions in Nepal to become mere namesake entities. As an economically poor state, finding hard even to maintain basic facilities to run day-to-day administration, and with a legislative assembly in perpetual suspended animation, understandably justice institution reforms is not even considered a possible priority by the Government of Nepal. However, the fact remains that without building adequate justice institution framework for the country to run its daily affairs, a state cannot progress and Nepal is no exception to this rule. It is unfortunate however, that the international community does not today consider Nepal as a priority state that requires immediate assistance.

7. Bangladesh and Pakistan are two other states in the south Asian region that has exceptionally poor performing criminal justice institutions. While Bangladesh shares the same fate as Sri Lanka due to executive control of its entire criminal justice apparatus, including its judiciary, it is the judiciary in Pakistan that has reasonably succeeded in carving out a reasonable independent space to function within the state structure in Pakistan. The entire criminal justice apparatus of Bangladesh is deeply corrupt and is under the control of the armed forces and the Prime Minister's office.

8. While the resurgence of democratic space in Pakistan today owes much to emerging judicial activism, uncontrolled and often going beyond the constitutional remit, Pakistan's judiciary has also started becoming a supra-constitutional authority in the country. Even though the judiciary is credited with ending dictatorship in Pakistan, today it has started superseding its constitutional remit and has repeatedly intervened in the parliamentary process against acceptable norms of non-interference in democratic decision making.

9. While the Pakistan judiciary enjoys relative immunity by comparison to the past from executive control, the lower rungs of the criminal justice apparatus remains thoroughly unfit to serve a democratic country and its day-to-day requirements. Even today police stations often operate under the control of the Army and custodial violence is the hallmark of Pakistan police. Women, children, the poor and the members of the minority communities are subjected to brute forms of custodial violence in Pakistan. Torture is practiced routinely and there are no functioning legal frameworks that are capable of preventing custodial violence in the country. In addition, the Army and its several investigative organs carryout structured and institutionalised violence against the people, that the entire country is unsafe for anyone who openly expresses critical views against state violence.

10. India on the other hand enjoys a unique position of having an exceptionally independent judiciary in the entire region and shares its position only with judiciaries in Hong Kong, Republic of Korea and Japan in the whole of Asia. However, the rest of the criminal justice administration in the country lacks capacity or willingness to follow the principles of the rule of law. Use of torture and deep-seated corruption are the defining characters of India's law enforcement apparatus that today people refer to their police as criminals in uniform. The Indian police are heavily understaffed like its judiciary and is incapable of undertaking any form of scientific criminal investigation. Criminal investigations often begin and end with a confession statement, reducing criminal trial into a farcical exercise.

11. In countries like Cambodia and Myanmar, absence of independent justice institutions is a foregone conclusion due to the violent and dictatorial past and present of both these countries. Concepts like presumption of innocence and fair trial do not exist even within the intellectual landscape of professionals and laypersons. Both in Cambodia and Myanmar, successful litigants are expected to reward the judge after adjudication and it is not considered bribe or undue influence. Judges, lawyers, prosecutors and law-enforcement officers are thoroughly underpaid that they are unofficially expected to make their living from bribes. The average monthly pay of a senior judge in Myanmar and Cambodia is a meagre USD 150-200. Lower ranking officers like police constables are paid much low that amounts to not more than USD 15-20 a month. This has led to keeping corruption a main stay within the criminal justice institutions in Cambodia and Myanmar.

12. In the Philippines, even though the country has a better structured and functioning justice institution framework by comparison to many other countries in Asia, deep-rooted corruption and inadequacy in implementing legislations have led to a situation where often criminal justice administration is considered to be extremely selective and nepotic in character. Torture and extrajudicial executions by both the state and non-state actors are rampant in the Philippines. Even though the country has an anti-torture legislation, its implementation is weak and often non-existent. So much so, even witnesses willing to depose before courts against state excesses are at risk from rouge state agents, along with human rights defenders who are willing to support them.

13. In Indonesia, the so-called police reform, which was marked by the institution's separation from the military in 1999, has only been partial and stagnant. It is happening at the regulatory level without helping people in their daily lives. The failure of the 'police-reform' is evidenced by a number of cases on execution, torture and fabrication of charges against individuals by the police, some of which had been documented and published by the Asian Legal Resource Centre (ALRC). For the criminal justice system in Indonesia to enhance the promotion and protection of human rights, the ALRC is of the view that police reform should cover the establishment of an independent and effective mechanism to investigate police abuses, detailed revision and clarification of the current non-transparent police recruitment and promotion mechanisms, as well as the modernisation of police education.

14. It is in the above described contexts that often complaints to thematic bodies within the UN, or reviews by the Human Rights Council under the UPR, receives standard suggestions from expert bodies at the UN, urging Asian states under review or cases in consideration, that the cases should be independently investigated, prosecuted and adjudicated promptly. The fact is none of this is possible in most Asian states, since the very nature of the institutions and their functional remit do not allow such independence or investigative processes or prompt adjudications. It is in this context,

that the UN should take extraordinary effort to study the actual functioning of the criminal justice institutions in Asian states, so that the engagement with the Asian states about their criminal justice apparatuses will be more realistic and meaningful.

15. It is time henceforth for the UN and its specialist bodies to stop merely recommending Asian states to 'investigate, prosecute and adjudicate' human rights cases, but to engage with these states with the purpose to understand the actual reasons for human rights abuses in Asia, and further to engage on these issues with a realistic understanding about the capacities of criminal justice institutions in these countries. For this, it is imperative that criminal justice institution reforms are made a central subject of discussion at the UN, without which no meaningful progress could ever be achieved to protect, promote and fulfil human rights guarantees in Asia.